

1 HONORABLE RICHARD A. JONES
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 AMELIA L. BUTLER,
14 Plaintiff,

15 CASE NO. C15-1304 RAJ

16 v.
17 NEW HORIZONS GREAT LAKES
18 HOLDING CORP.; M&J LLC,
Defendants.

ORDER

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20 **I. INTRODUCTION**

21 This matter comes before the court on defendants' motion to stay proceedings in
22 favor of arbitration. Dkt. # 47. For the reasons stated below, the motion is GRANTED.

23 **II. BACKGROUND**

24 Defendant New Horizons Great Lakes Holding Corporation ("New Horizons")
25 provides training in the fields of healthcare information management, information
26 technology, office productivity, business skills, and business process management, in the

1 Midwest and various geographic markets. Dkt. # 47, p. 2. Defendant M&J, LLC ("M &
2 J") offers training in the fields of healthcare information management, training
3 information technology, office productivity, business skills, and business process
4 management in the Detroit, Michigan area. *Id.*

5 Plaintiff Amelia Butler through her company Healthcare Information Technology
6 Stimulus Center, LLC claims to be the "owner of several trademarks, copyrights, and
7 processes related to, and involving information management, information systems,
8 telecommunications, and management engineering in healthcare institutions, education
9 services, educational institutions and the HIM Entrance Exam." Dkt. # 49-1, p.1.

10 On July 6, 2012, the parties entered into two licensing agreements that
11 contemplated that Ms. Butler would design certain courseware to train students and
12 dislocated workers in healthcare management and then license that courseware to
13 defendants. Dkt. # 47, p. 3. To the extent the court can decipher Ms. Butler's complaint,
14 she appears to allege claims for breach of contract, copyright infringement, trade secret
15 misappropriation, and trademark infringement.¹ Dkt. # 41.

16 The parties' licensing agreements included the following arbitration provision:

17 This Agreement shall be governed by the laws, regulations,
18 and proceedings of the State of Washington. In the event of a
19 dispute under this agreement, both parties will use their best
20 efforts to resolve the dispute amicably. If amicable resolution
21 cannot be had the parties agree to submit their dispute to
22 binding arbitration subject to the American Arbitration
Association rules. Venue for resolution of the disputes shall
23 be in the State of Washington County of King.

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26 Dkt. # 36-1, p. 10 of 13; Dkt. # 36-2, p. 11 of 14.

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1 Neither party disputes that they signed these licensing agreements. Ms. Butler,
 2 however, contends that certain “Licensor Usage Guidelines” were “incorporated by
 3 reference” into the licensing agreements. These Licensor Usage Guidelines are stated in
 4 a sixty-four page undated and unsigned document that contains several provisions which
 5 allow Ms. Butler to, among other things: (1) unilaterally decide to withdraw or transfer a
 6 dispute and/or certain claims from AAA to “another administrative body other than
 7 [AAA]”; (2) unilaterally decide not to use an arbitrator that is listed on the AAA
 8 arbitration selection list; (3) if Butler/LLC do decide to terminate or transfer to another
 9 arbitrator or arbitration, Butler/LLC can “set the rules that apply as needed”; (4)
 10 unilaterally “disqualify, remove, terminate or transfer an arbitrator and or arbitration as
 11 needed at any time”⁴ for, among other reasons, “not following HC-IT-SC LLC policies,
 12 HC-IT-SC LLC Rules or HC-IT-SC LLC contracts as stated”; (5) prohibit the arbitrator,
 13 once appointed, from “dropping, stopping, and or delaying the dispute” as a result of
 14 being “owed money by one side.”; (6) “remove, disqualify and/or terminate the
 15 arbitrator” if Butler/LLC determine that “the arbitrator ignores the facts of the agreements
 16 and terms those [sic] apply, or gets the law completely wrong”; and (7) require
 17 Defendants to pay all arbitration fees and arbitrator fees. Dkt # 49-4, p. 17-18.

18 Defendants insist that they never saw or discussed the Licensor Usage Guidelines
 19 and that they would never have agreed to such one-sided terms. Greenberg Decl., Ex. B,
 20 ¶¶ 5-6.

21 **III. ANALYSIS**

22 Because the Federal Arbitration Act (“FAA”) requires courts to “direct the parties
 23 to proceed to arbitration on issues as to which an arbitration agreement has been signed,
 24 the FAA limits court involvement to determining (1) whether a valid agreement to
 25 arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at
 26 issue.” *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (internal
 27 quotations omitted). The party opposing arbitration bears the burden of showing that the

1 agreement is not enforceable. *See Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 91-
 2 92 (2000); *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 483
 3 (1989).

4 Here, neither party disputes that they signed the licensing agreements and agreed
 5 to the arbitration provision quoted above. Accordingly, the court finds that the arbitration
 6 provision is valid and enforceable.

7 The court's ruling, however, does not extend to the Licensor Usage Guidelines.
 8 Plaintiff has failed to submit any evidence that defendants ever agreed to be bound by
 9 this unsigned, undated, and unauthenticated document, which contains terms that are
 10 plainly one-sided. *See* Dkt. # 49-4, pp. 17-18. Indeed, the evidence in the record
 11 establishes the contrary. Gary Abernathy, defendants' signing representative for both
 12 agreements, testified in a sworn statement submitted by defendants that he had never
 13 seen, or even discussed, the Licensor Usage Guidelines until almost three years later,
 14 when they were submitted by Ms. Butler with her motion to enforce them. *See*
 15 Greenberg Decl., Ex. B, ¶ 5.

16 With respect to the scope of the arbitration provision, the court notes that the
 17 language of the agreement requires the parties to arbitrate any "dispute under this
 18 agreement." Here, it appears that all of plaintiff's claims against defendants arise from
 19 the licensing agreements. Accordingly, all of her claims must be decided in arbitration.

20 Further, Rule 7(a) of the AAA Commercial Rules of Arbitration provides that "the
 21 arbitrator shall have the power to rule on his or her own jurisdiction, including any
 22 objections with respect to the existence, scope, or validity of the arbitration agreement or
 23 the arbitrability of any claim or counterclaim." Consequently, federal courts have held
 24 that incorporation of the AAA Rules into the parties' arbitration agreement demonstrates
 25 an intent to "have the arbitrator decide disputes over the scope of the arbitration
 26 agreement." *Madrigal v. New Cingular Wireless Servs., Inc.*, 2009 WL 2513478, at *5-6
 27 (E.D. Cal. Aug. 17, 2009) (citing federal cases); *see Oracle Am., Inc. v. Myriad Grp.*

1 A.G., 724 F.3d 1069, 1074 (9th Cir. 2013) (citing cases for proposition that “[v]irtually
2 every circuit to have considered the issue has determined that incorporation of the
3 American Arbitration Association’s (AAA) arbitration rules constitutes clear and
4 unmistakable evidence that the parties agreed to arbitrate arbitrability”); *but see Meadows*
5 *v. Dickey’s Barbeque Rest., Inc.*, -- F. Supp. 3d --, 2015 WL 7015396, at *5 (N.D. Cal.
6 Nov. 12, 2015). Accordingly, to the extent there is any dispute as to whether any of Ms.
7 Butler’s claims are arbitrable, this issue should be determined by the arbitrator.

8 **IV. CONCLUSION**

9 For all the foregoing reasons, the court GRANTS defendants’ motion and stays
10 this case in favor of arbitration. Dkt. # 47. Pursuant to the parties’ licensing agreements,
11 any further arbitration proceedings initiated by Ms. Butler must be submitted to the
12 American Arbitration Association with the venue in King County. Further, unless
13 otherwise agreed by the parties, the arbitration must take place before the Honorable
14 George Finkle. *See* RCW § 7.04A.110 (acknowledging court’s authority to appoint
15 arbitrator); 9 U.S.C. § 5 (same).

16 The parties are directed to advise the court of the status of arbitration within 120
17 days of this order. If the parties fail to commence arbitration within 12 months of this
18 order, the court will dismiss the underlying claims and terminate the case. *See Sanford v.*
19 *MemberWorks, Inc.*, 483 F.3d 956, 962-63 (9th Cir. 2007). The clerk is directed to
20 administratively close this matter.

21 Dated this 9th day of May, 2016.

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25 The Honorable Richard A. Jones
26 United States District Judge